

Rule 44. Review of Voluntary Placement Matters**44.01 Generally**

Subdivision 1. Scope of Review. This rule governs review of all voluntary foster care placements made pursuant to Minnesota Statutes, section 260C.227.

Subd. 2. Jurisdiction. The court assumes jurisdiction to review a voluntary foster care placement of a child pursuant to Minnesota Statutes, section 260C.227, upon the filing of a petition pursuant to Minnesota Statutes, section 260C.141, subdivision 2.

Subd. 3. Court File Required. Upon the filing of a petition under this Rule, the court administrator shall open a juvenile protection file which is part of the juvenile protection case record related to the matter. If a child in need of protection or services file regarding this child already exists, the petition shall be filed in that file.

(Amended effective January 1, 2004; amended effective January 1, 2007; amended effective August 1, 2009; amended effective July 1, 2014; amended effective July 1, 2015.)

44.02 Petition and Hearing

Subdivision 1. Timing of Petition. When the responsible social services agency expects the child's need for voluntary foster care placement will not exceed a total of 180 days and the child's safety, health, and best interests do not require the court to order the child in foster care, a petition shall be filed within ninety (90) days of the date of the voluntary placement agreement and shall state the reasons why the child is in placement, the progress on the out-of-home placement plan required pursuant to Minnesota Statutes, section 260C.212, subdivision 1, and the statutory basis for the petition pursuant to Minnesota Statutes, section 260C.007, subdivision 6. A copy of the out-of-home placement plan shall be filed with the petition.

Subd. 2. Service of Petition. Upon the filing of the petition, the court administrator shall serve the petition, together with out-of-home placement plan, upon the parties and shall schedule a hearing pursuant to subdivision 3. The petition may be served personally, by U.S. mail, through the E-Filing System, by e-mail or other electronic means agreed upon in writing by the person to be served, or as otherwise directed by the court.

Subd. 3. Timing of Hearing. When a petition is filed under subdivision 1, the matter shall be set for hearing within twenty (20) days of service of the petition.

Subd. 4. Initial Hearing.

(a) **Agreement to Continue.** At the initial hearing following the filing of a petition under subdivision 1, if all parties agree to the findings under paragraph (b) of this subdivision, the matter may be continued without the requirement of the parent or legal custodian entering an admission or denial to the petition. The matter may be continued for up to a total of ninety (90) more days during which time the child may continue in foster care on a voluntary basis.

(b) **Findings.** When all parties agree and the court finds that it is in the best interests of the child, the court may find the petition states a prima facie case that:

- (1) the child's needs are being met;
- (2) the placement of the child in foster care is in the best interests of the child;
- (3) reasonable efforts to reunify the child and the parent or legal custodian are being made; and

(4) the child will be returned home in the next ninety (90) days.

(c) **Approval of Placement.** If the court makes the findings required pursuant to paragraph (b), the court shall approve the voluntary arrangement and continue the matter for up to ninety (90) days to ensure the child returns to the parent's home or that the matter is returned to court as required under subdivision 5(b).

Subd. 5. Further Proceedings.

(a) **Agency Report to Court Upon Child's Return Home.** The responsible social services agency shall report to the court when the child returns home and the progress made by the parent on the case plan required pursuant to Minnesota Statutes, section 260C.212, subdivision 1. Upon receiving the report that the child has returned home, the court shall dismiss the petition.

(b) **Return to Court When Child Not Home.** If the child does not return home within the ninety (90) days approved by the court:

(1) the matter shall be returned to court for:

(i) an emergency protective care hearing pursuant to Rule 30 if the petition filed under item (2) of this paragraph asks the court to order protective care; or

(ii) for an admit/deny hearing pursuant to Rule 34 if the petition does not ask the court to order protective care; and

(2) the responsible social services agency shall file a new petition alleging the child's need for protection or services and explaining why the child's foster care placement shall exceed the 180-day statutory maximum permitted for voluntary placements under Minnesota Statutes, section 260C.212, subdivision 8. The petition shall:

(i) state a prima facie basis for the court to order the child to continue in foster care under Rule 30 and Minnesota Statutes, section 260C.178; or

(ii) have sufficient facts to support a disposition of legal custody to the agency for continued foster care under Rule 41.

(c) **Trial.** If the petition is not admitted at the hearing scheduled under subdivision 4(a), the matter shall be set for trial.

Subd. 6. Disagreement with Voluntary Placement. If any party or the child disagrees with the voluntary placement or the sufficiency of the services offered by the responsible social services agency at the time of the initial hearing, or if the court finds that the placement or case plan is not in the best interests of the child, the court shall schedule a trial to determine what is in the best interests of the child.

Subd. 7. Calculating Time Period. When a child is placed in foster care pursuant to a voluntary placement agreement pursuant to Minnesota Statutes, section 260C.227, the time period the child is considered to be in foster care for purposes of determining whether to proceed pursuant to Minnesota Statutes, section 260C.503, subdivision 1, is sixty (60) days after the voluntary placement agreement is signed, or the date the court orders the child in protective care, whichever is earlier.

(Amended effective January 1, 2004; amended effective January 1, 2007; amended effective August 1, 2009; amended effective July 1, 2014; amended effective July 1, 2015.)

2008 Advisory Committee Comment

Rule 44.02, subdivision 5(a) and (b), deal with the child's return home. A child may not continue in foster care on a voluntary basis longer than 180 days unless the child is in foster care treatment under Minnesota Statutes, chapter 260D. See Minnesota Statutes, section 260C.212, subdivision 8. The parent may agree that the child needs to continue in foster care longer than 180 days, in which case the parent may admit a petition alleging the child in need of protection or services which states the basis for the child's need to continue in foster care. Under these circumstances the court has a legal basis to order the child to continue in foster care. If the parent does not agree, the agency shall return the child to the care of the parent unless there is a basis for an order for emergency protective care under Rule 30 and Minnesota Statutes, section 260C.178.

44.03 Procedures When Court-Ordered Foster Care, Permanent Placement, or Termination of Parental Rights Sought

Subdivision 1. Applicable Rules When Other Than Voluntary Review is Sought. When a child enters foster care pursuant to a voluntary placement agreement under Minnesota Statutes, section 260C.227, and there is a sufficient evidentiary basis, the responsible social services agency may file a petition for termination of parental rights, a petition for permanent placement of the child away from the parent, or a petition alleging the child to be in need of protection or services stating sufficient facts to meet any definition of Minnesota Statutes, section 260C.007, subdivision 6. The matter shall proceed under:

(a) Rule 30 if the petition requests an order for protective care under Rule 30.10 and Minnesota Statutes, section 260C.178; or

(b) Rule 34 if an order for protective care is not requested.

Subd. 2. Timing of Hearing. When a petition is filed under subdivision 1, timing of the required hearing shall be pursuant to:

(a) Rule 30.01 if the petition requests an order for protective care under Rule 30.10 and Minnesota Statutes, section 260C.178; or

(b) Rule 34.02 if an order for protective care is not requested.

(Added effective August 1, 2009; amended effective July 1, 2014.)